

Mr. Easterwood

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

15759

FILE: B-200749

DATE: December 29, 1980

MATTER OF: Jack B. Dugwyler, Jr.--Real estate
sale expenses

DIGEST: Employee transferred from Tacoma, Washing-
ton to Portland, Oregon, in January 1976
and from Portland to Lakewood, Colorado,
in September 1977, sold his family
residence in Tacoma on September 25, 1978.
He is not entitled to reimbursement of
real estate sale expenses since applicable
regulations limit maximum time for sale
of residence at the old duty station
(Tacoma) to within 2 years from entry on
duty at the new station (Portland) and
since the Tacoma residence does not qualify
for real estate sale expenses incident to
transfer to Lakewood because employee
did not commute on a daily basis between
it and Portland, his old duty station for
purposes of that transfer.

Mr. Jack B. Dugwyler, Jr., an employee of the
Geological Survey, Department of Interior, appeals from
the settlement dated December 7, 1979, issued by our
Claims Division (now Claims Group) which disallowed
his [claim for reimbursement of real estate expenses]
incurred in selling his Tacoma, Washington residence
incident to his permanent changes of duty station
from Tacoma to Portland, Oregon, and from Portland
to Lakewood, Colorado. The issues in this case are
(1) whether the time period for sale of a residence
at the employee's old duty station incident to his
transfer to Portland may be extended beyond 2 years
because of his subsequent transfer to Lakewood, and
(2) whether the Tacoma residence qualifies for reim-
bursement of residence sale expenses incident to his
subsequent transfer to Lakewood. We hold that the
1-year period, as properly extended to 2 years, may
not be further extended and that the employee's weekend
and occasional commuting between his Tacoma residence
and Portland does not qualify that residence for real
estate sale expenses incident to his transfer from
Portland to Lakewood.

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Mr. Dugwyler was transferred from Tacoma, Washington, to Portland, Oregon, on January 5, 1976. His family remained in their Tacoma residence, approximately 150 miles from his new duty station in Portland, and Mr. Dugwyler obtained a room in Portland from which he generally commuted on a daily basis to his duty station in Portland. He did return to and commuted from his family residence in Tacoma for the weekends and infrequently during the week. Apparently, Mr. Dugwyler requested and received in November 1976 an extension to 2 years (January 5, 1978) of the 1-year period in which the real estate expenses in connection with the sale of his residence at his old duty station--Tacoma--could be reimbursed.

In August 1977 Mr. Dugwyler applied for and was selected to fill a vacancy in Lakewood, Colorado. He transferred there and entered on duty September 6, 1977. Before transferring Mr. Dugwyler was advised by the Geological Survey that he would be allowed reimbursement for the sale of his family residence in Tacoma. In August 1978, with his family still residing in Tacoma, Mr. Dugwyler requested and obtained an extension to 2 years of the 1-year time period for the sale of a residence incident to his transfer from Portland to Lakewood. Later in August Mr. Dugwyler's family joined him in Lakewood where he had purchased a residence, and on September 25, 1978, Mr. Dugwyler sold the family's former residence in Tacoma, Washington.

Since Mr. Dugwyler did not sell his Tacoma residence until more than 2 years after January 15, 1976, the effective date of his transfer from Tacoma to Portland, our Claims Division denied the claimed expenses connected with this sale.

Mr. Dugwyler argues that the 2-year time period for reimbursement of real estate expenses incident to his initial transfer from Tacoma to Portland should be extended as though it began to run from the date of his entry on duty in Lakewood. He suggests that sound

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fiscal management dictates this approach since he could have sold his family residence in Tacoma and purchased a new residence in Portland, selling that residence and purchasing still another residence incident to his transfer from Portland to Lakewood, with full reimbursement for the 2 moves. In this case he points out that he is only asking for reimbursement for one move of his family residence, rather than 2 moves he would have been entitled to.

Chapter 2 of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), governs the entitlements of civilian employees of the Federal Government to relocation allowances. Para. 2-6.1 provides for reimbursing an employee for the expenses of selling a residence at his old official station and of purchasing a residence at his new station. However, para. 2-6.1(e) of the FTR imposes a time limitation on such sales and purchases, as follows:

"e. TIME LIMITATION. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

Issued pursuant to 5 U.S.C. § 5724a (1976), which contains the authority for reimbursement of real estate

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expenses, these regulations have the force and effect of law and may not be waived by any department of the Government in an individual case. The FTR clearly provides that the settlement date on a residence transaction must occur not later than 2 years after the date on which the employee reported for duty at his new station. Agency officials have no authority to grant an exception to that requirement. 58 Comp. Gen. 539 (1979). The argument that a series of transfers, all within a relatively short period of time, provides a basis to extend the 2-year maximum applicable to any one of those successive transfers was rejected in Robert C. Denz, B-185669, September 29, 1976. Thus, our Claims Division was correct in holding that Mr. Dugwyler was not entitled to reimbursement for the expenses of selling his Tacoma residence incident to his transfer from Tacoma to Portland since the sale occurred more than 2 years after the effective date of that change of station.

Mr. Dugwyler further argues that the expenses of selling his Tacoma residence should be reimbursed under the authority of the order transferring him from Portland to Lakewood. Since Mr. Dugwyler entered on duty in Lakewood September 6, 1977, and requested and received an extension of the 1-year time period for reimbursement to September 6, 1979, his sale of the Tacoma residence in September of 1978 would fall within the time period allowable for reimbursement. And he states that because he commuted from the Tacoma residence to his duty station in Portland on weekends and occasionally during the week, and because he was assured by the Geological Survey that the expenses of the sale would be reimbursed, his Tacoma residence should be regarded as his residence "at his old station" of Portland for the purposes of reimbursing residence transaction expenses upon his transfer to Lakewood.

Under 5 U.S.C. § 5724a(a)(4) reimbursement for residence sale expenses is limited to costs of selling

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a residence located at the employee's old station incurred incident to transfer from that to a new duty station. For the purpose of determining whether the residence is at the employee's old station, the term "official station" is defined at FTR para. 2-1.4i, which provides in pertinent part:

"Official station or post of duty. The building or other place where the officer or employee regularly reports for duty.
* * * With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official."

Under that proviso whether Mr. Dugwyler's family residence in Tacoma can be regarded as his residence at his old duty station for the purpose of his transfer from Portland to Lakewood depends on whether or not he regularly commuted between his duty station in Portland and his residence in Tacoma.

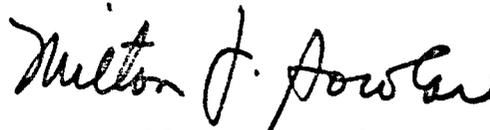
Our Office has considered several situations in which an employee commuted on weekends from a family residence not located in the immediate vicinity of his duty station. In those cases we held that the requirement that the employee regularly commute from the residence in question contemplates commuting on a daily basis--not just on weekends or occasionally during the week. See Clifton E. Klinefelter, B-185584,

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June 30, 1976, and B-176787, October 25, 1972. In B-176687, October 13, 1972, and May 21, 1974, we considered the claim of an employee whose family remained in the residence they had occupied in San Diego, the employee's old duty station, until after the employee had been transferred first to San Francisco and then to Denver. In holding that the employee could not be reimbursed expenses incurred in selling his San Diego residence more than 2 years after the date of his transfer to San Francisco, we rejected the additional argument that the expenses claimed could be reimbursed incident to his subsequent transfer to Denver since he did not commute on a daily basis between that residence and San Francisco. Since Mr. Dugwyler did not "regularly commute" from his Tacoma residence to his Portland duty station, that residence does not qualify for reimbursement of real estate sale expenses incident to his transfer from Portland to Lakewood.

It is unfortunate that Mr. Dugwyler was misinformed by the Geological Survey about the requirements for reimbursement, but it is a well established rule of law that the Government is neither bound nor estopped by the erroneous or unauthorized acts of its officers, agents, or employees even though committed in the performance of their official duties. 58 Comp. Gen. 539 (1979) and cases cited therein.

Accordingly, Mr. Dugwyler may not be reimbursed for the real estate expenses incident to the sale of his family residence in Tacoma.



For The Comptroller General
of the United States

Memorandum

December 29, 1980

TO : Associate Director, AFMD - Claims Group (Room 5858)

FROM : *Milton J. Arnold*
Comptroller General
For The

SUBJECT: Request for reimbursement of real estate
expenses incident to the sale of a residence at
the employee's old duty station--Mr. Jack B.
Dugwyler, Jr.
B-200749-O.M.

Attached is Claims File Z-2816642, a copy of our
letter of today to Senator Hart, and a copy of decision
B-200749 sustaining the denial of reimbursement for
real estate sale expenses in the subject case.

Attachments - 3



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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December 29, 1980

The Honorable Gary Hart
United States Senator
1748 High Street
Denver, Colorado 80218

Dear Mr. Hart:

We refer to your letter of September 22, 1980, with enclosures, on behalf of Mr. Jack B. Dugwyler, Jr., 12617 W. Arizona Place, Lakewood, Colorado 80228. Mr. Dugwyler appeals from the settlement of our Claims Division (now Claims Group) which denied his claim for reimbursement for real estate sale expenses incident to transfer.

We are enclosing a copy of our decision of today in which we have sustained the denial of his claim by our Claims Division. Unfortunately, for the reasons explained in that decision, there is no authority to reimburse Mr. Dugwyler for the real estate expenses claimed.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

For The Comptroller General
of the United States

Enclosures - 2